BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST	**)**	
	)	
SERGEANT LUIS LOPEZ,	**)**	**No. 16 PB 2923**
STAR No. 1417, DEPARTMENT OF POLICE,	**)**	
CITY OF CHICAGO,	**)**	
	)	
AND	**)**	
	)	
POLICE OFFICER DANIEL FELICIANO,	**)**	**No. 16 PB 2924**
STAR No. 16807, DEPARTMENT OF POLICE,	**)**	
CITY OF CHICAGO,	**)**	
	)	**(CR No. 300039)**
RESPONDENTS.	**)**	

FINDINGS AND DECISION

On December 21, 2016, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Sergeant Luis Lopez, Star No. 1417, and Police Officer Daniel Feliciano, Star No. 16807 (hereinafter sometimes referred to as "Respondents"), recommending that each Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct, which set forth expressly prohibited acts:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

Rule 5: Failure to perform a duty.

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 14: Making a false report, written or oral.

A hearing on these charges against the Respondents took place before Police Board Hearing Officer Jeffrey I. Cummings on February 1, 2, and 16, 2018. Following the hearing, the

members of the Police Board read and reviewed the record of the proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Cummings made an oral report to and conferred with the Police Board before it rendered its findings and decision. (Board Members Eva-Dina Delgado and Michael Eaddy recused themselves from these cases pursuant to §2-57-060(c) of the Municipal Code of Chicago.)

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. Each Respondent was at all times mentioned herein employed as a sworn officer by the Department of Police of the City of Chicago.

2. A copy of the charges filed, and a notice stating the date, place, and time the initial status hearing would be held, were personally served upon each Respondent not fewer than five (5) days before the date of the initial status hearing for these cases.

3. Throughout the hearing on the charges each Respondent appeared in person and was represented by legal counsel.

Introduction

4. These cases arise out of events that occurred on August 10, 2004. On that date, Respondent Officer Daniel Feliciano and Respondent Sergeant (then Officer) Luis Lopez were assigned to the 14th District and working as partners. Respondents observed a van occupied by three individuals they knew, ran the van's plates, and received a notification that the van was stolen. Respondents pursued the van as it drove at a high rate of speed northbound on Kedzie

Avenue and ran through red lights at the intersections of Kedzie and Elston Avenue and Kedzie and Addison Street. The van collided with a car at the intersection of Kedzie and Addison - - a location that was outside of the 14th District - - and seriously injured a young woman. Once Respondents arrived at the scene, Officer Feliciano got out and chased the men who exited the van and Sergeant Lopez followed after his partner in their squad car. Officer Feliciano arrested one of the men and Respondents transported him back to the 14th District station for processing.

In mid-August 2004, the Department initiated an internal investigation against Respondents that resulted in Respondents being charged with leaving their assigned District without permission and violating the Department's policy on vehicle pursuits. The Department found that the allegation that Respondents left their assigned District without permission was "sustained," the allegation that Respondents violated the policy on vehicle pursuits was "not sustained," and that Respondents should receive a reprimand as discipline for their violation. Respondents accepted the recommended discipline in mid-May 2005.

In August 2004, the crash victim's family filed a civil lawsuit against the City of Chicago and Respondents alleging that they were at fault for victim's injuries. This civil lawsuit was settled in 2010 with a multi-million dollar payment to the crash victim. After the settlement, the Independent Police Review Authority ("IPRA") reopened an investigation into Respondents' conduct in the spring of 2010. IPRA's investigation, which lasted for over six years, led to the Superintendent's filing of the current charges against Respondents on December 21, 2016.

The parties raised two preliminary matters after the charges were filed against Respondents. First, on May 11, 2017, Respondents filed a motion to dismiss all charges against them with a request that the Board rule on the motion prior to the hearing even if this method of proceeding caused a delay in the ultimate disposition of the case. The Superintendent filed a

response brief and Respondents filed a reply in support of their motion. Notwithstanding Respondents' request, the Board deferred its decision on the motion to dismiss so that the factual record could be developed fully at the hearing. Next, on November 13, 2017, the parties filed with the Board a Joint Stipulation seeking to resolve the charges against Respondents. On November 29, 2017, the Board issued an Order declining to accept the Joint Stipulation because the Board was unable to determine the appropriateness of the Stipulation without a more complete factual record that would have to be developed at the evidentiary hearing.

After consideration of the parties' briefing on the motion to dismiss and the evidence presented during the hearing, the Board grants in part and denies in part Respondents' motion to dismiss for the reasons outlined below, and it hereby dismisses all charges that directly concern Respondents' actions in August and September of 2004. The Board also finds that Respondents are guilty of violating Rule 2, Rule 3, and Rule 14 in connection with the charges that concern their 2006 depositions during the civil lawsuit and their 2013 interviews with IPRA because Respondents made false sworn statements on these occasions regarding their location and activities shortly before the collision on August 10, 2004.

A. The Undisputed Facts

Most of the facts in this case are not in dispute and the evidence presented at the hearing establishes the following.

Both Sergeant Lopez and Officer Feliciano became Chicago police officers in December 2000 and were assigned to the 14th District after graduating from the police academy. The 14th District is bounded by Belmont Avenue on the north, Central Park Avenue on the west, Division Street on the south, and the Chicago River on the east. The 14th District station police station is

located at 2150 N. California Avenue. Officers who are assigned to the 14th District have to pick up their squad cars and sign in and sign out of duty at the 14th District station.

Respondents worked as patrol officers in the 14th District between 2001 and the date of the incident on August 10, 2004, and they got to know certain individuals who lived in or visited the District. On the evening of August 10, 2004, Respondents were working as partners on the third watch (4:00 p.m. to midnight). Sergeant Lopez was driving their squad car and Officer Feliciano was the passenger. Respondents were assigned to patrol Beat 1412, which is bounded by Belmont on the north, Central Park on the west, Wrightwood Avenue on the south, and Kedzie on the east. Officers are supposed to stay within their assigned beat and they cannot leave their District without authorization.

At 10:44 p.m., Respondents received an assignment regarding a stolen vehicle via the PDT (portable data terminal) that was located in their center of their squad car. Respondents went to the indicated location at 3008 N. Sawyer Avenue and they "cleared and closed" (*i.e.*, completed) their assignment at 11:26 p.m. Respondents remained at the Sawyer location until 11:30 or 11:31 p.m. to finish up paperwork. Respondents then drove southbound on Sawyer until they reached Wellington. (The parties dispute where Respondents went and what they did during the five to six minutes. The Board will address this factual dispute in Paragraph 4B below.)

Three to four minutes later, Respondents observed a van that was occupied and driven by Angel Figueroa, Edward Rivera, and Pedro Hernandez. Respondents knew these individuals by name and sight, as Respondents had encountered them in the course of their official duties within the 14th District. Indeed, Officer Feliciano had arrested Mr. Figueroa just eight days before the evening of August 10. Officer Feliciano ran the van's plate by entering it into PDT. Just a few seconds later, at 11:34:30 p.m., Respondents received a notification on their PDT that the van was

stolen. Respondents pursued the van northbound on Kedzie as it drove at between 30 and 40 miles per hour through red traffic lights at the intersections of Kedzie and Elston and Kedzie and Addison. As the van sped through the intersection of Kedzie and Addison, it collided with a car.

At the time of the crash, Gena O'Malley was stopped in her car in a westbound lane of Addison at the intersection of Addison and Kedzie waiting for her light to turn green. Ms. O'Malley saw the van run the red light and hit a light post. She also saw a person fly through the air and land on the passenger side of her car. The person was Melisa Varela, who had been ejected from the car and who sustained serious injuries. Ms. O'Malley called 911 at 11:36:40 p.m. to report that a terrible car accident had occurred. Ms. O'Malley also reported that there was an injured person laying in the street and that she had observed a police officer chasing after a person who had exited the van. Ms. O'Malley testified that she made her 911 call ten seconds after she saw the person flying through the air. A second person called 911 regarding the collision at 11:37:04 p.m., or twenty-four seconds, after Ms. O'Malley made her call.

When Respondents arrived on the scene of the crash, Officer Feliciano jumped out of Respondents' squad car and began chasing after the individuals who exited the van. Sergeant Lopez followed after his partner in the squad car and did not remain on the scene of the crash. Officer Feliciano apprehended Pedro Hernandez. When Respondents returned to intersection of Kedzie and Addison after they apprehended Mr. Hernandez, paramedics were already on the scene providing assistance. Respondents thereafter escorted Mr. Hernandez back to the 14th District station for processing.

Respondents admit that they did not notify the Office of Emergency Management & Communications ("OEMC") of the crash or of their pursuit of the van. Respondents further admit that they did not render aid to Ms. Varela, call for an ambulance, or remain at the intersection of

Addison and Kedzie to secure the scene of the crash. Finally, Respondents admit that their failure to take these actions violated Department policies.

At 1:20 a.m. on the morning of August 11, Investigator Postelnick from the Major Accident Investigation Unit ("MAIU") and his partner were assigned to investigate the crash at Kedzie and Addison. Once on the scene, Investigator Postelnick interviewed witnesses to the crash, including Respondents - - who had since returned to the scene from the 14th District station. Both Respondents, who were interviewed separately, told Investigator Postelnick the following:

- Respondents were exiting from the parking lot at the Jewel grocery store (3570 N. Elston) facing east with the intent of turning southbound on Kedzie;
- Respondents saw a van speed by northbound on Kedzie at a high rate of speed and go through run the red light at Kedzie and Elston;
- Respondents decided to make a traffic stop on the van;
- Sgt. Lopez turned on his emergency lights and turned north on Kedzie;
- Respondents saw the van go through the red light signal at Kedzie and Addison and strike a vehicle in the vicinity of that intersection; and
- Officer Feliciano exited the squad car and followed the occupants who had exited the van and were fleeing north on Kedzie.

In addition, Sergeant Lopez told Investigator Postelnick that he saw a person in the roadway, called from ambulance emergency services, and went over to the person.[1]

On August 17, 2004, Sergeant Panek of the MAIU initiated an investigation against Respondents under Complaint Register No. 300039. The initial allegations against Respondents were that they: (1) failed to comply with the General Order concerning the Vehicle Pursuit Policy; (2) became involved in an unauthorized vehicle pursuit; (3) failed to notify OEMC of becoming

[1] At the hearing, both Respondents testified that they could not recall what they said during their interviews with Investigator Postelnick. Consequently, Respondents could not deny Investigator Postelnick's recitation of what they said during their interviews with him.

involved in that pursuit; (4) failed to complete traffic pursuit reports to obtain a pursuit tracking number; and (5) left their assigned District without permission. On September 20, 2004, both Respondents were formally served with "administrative proceeding rights (statutory)/notification of charges/allegations" which specified the charges against them. In particular, both Respondents were charged with failing to comply with General Order 03-03-01 involving Emergency Vehicle Operations – Pursuits[2] and with violating Department Rule 30 by leaving duty assigned without being properly relieved or without proper authorization.

As part of the investigation, Respondents were required to submit a written statement in the form of a memorandum relative to the allegations against them. To comply with this requirement, Respondents submitted "To/From" Reports addressed to 14th District Commander Avila on September 23, 2004.

In his "To/From" Report, Sergeant Lopez stated the following:

R/O [Reporting Officer] was working on the day of allegation with his partner P.O. [Police Officer] Feliciano, #16807, beat 1412, vehicle #9759 in full uniform. R/O was at Bank One, located in the shopping mall at Kedzie and Elston, to make a night deposit at that financial institution.

While at said location, R/O's heard a loud screeching sound followed by a collision, which had occurred at the intersection of Kedzie and Addison. In that collision was a blue/grey full size conversion van and another vehicle in traffic.

R/O's immediately responded to the scene, and observed three offenders exit and flee from above said vehicle. A brief foot chase ensued, and one offender was apprehended by P.O. Feliciano, while R/O rendered aid and secured the scene of the accident. Offender was then taken to the 014th District for processing.

Officer Feliciano's "To/From" Report was materially identical and stated the following:

R/O was working on the day of allegation with his partner P.O. Lopez, #4520, beat 1412,

[2] This charge was based on the MAIU's initial interview with Mr. Rivera, who stated that he was a passenger in a van being chased by a marked Chicago Police squad car and he identified Respondents as the officers who were the occupants of the car. Mr. Rivera, however, did not cooperate any further with the investigation.

vehicle #9759 in full uniform. R/O was at Bank One, located in the shopping mall at Kedzie and Elston, to make a night deposit at that financial institution.

While at said location, R/O's heard a loud screeching sound followed by a collision, which had occurred at the intersection of Kedzie and Addison. In that collision was a blue/grey full size conversion van and another vehicle in traffic.

R/O's immediately responded to the scene, and observed three offenders exit and flee from above said vehicle. A brief foot chase ensued, and one offender was apprehended by R/O, while P.O. Lopez rendered aid and secured the scene of the accident. Offender was then taken to the 014th District for processing.

The investigation was assigned to Sergeant Jose Ortiz from the 14th District.[3] Sergeant Ortiz had Respondents' "To/From" Reports, the MAIU investigation report (which contained summaries of Respondents' interviews with Investigator Postelnick), and the pertinent OEMC event query (which documented all 911 calls that came in and other calls and data transmissions from and to officers that related to the events of August 10, 2004) available to him as he conducted his investigation. Sergeant Ortiz completed his investigation on or about November 10, 2004, and found that the allegation that Respondents violated Department Rule 30 by leaving duty assigned without being properly relieved or without proper authorization was sustained, the allegation that Respondents failed to comply with General Order #03-02-01 involving Emergency Vehicle Operations – Pursuit was not sustained, and he recommended that Respondents receive a reprimand as disciplinary action for their violation. On April 15, 2005, after a Command Channel Review, Assistant Deputy Superintendent Debra Kirby from the Internal Affairs Division concurred with the sustained finding and the recommended discipline. In mid-May 2005, both Respondents accepted the findings and recommended reprimand.

In August 2004, shortly after the crash, Ms. Varela's family filed a civil lawsuit in the Circuit Court of Cook County against the City of Chicago and Respondents alleging that they were

[3] Sergeant Ortiz, who is now retired from the Department, did not appear to testify at the hearing notwithstanding the Superintendent's diligent efforts to serve him with a subpoena to secure his presence.

at fault for Ms. Varela's injuries. During the course of discovery, Respondents provided sworn deposition testimony in September 2006 regarding their actions and location immediately prior to the August 10, 2004, collision at Kedzie and Addison. In particular, both Respondents testified in their depositions that they were in their squad car idling in a northbound direction in a southbound lane of Kedzie immediately prior to the collision. In addition, Sergeant Lopez testified in his deposition that he never stated to the MAIU investigators that he was in the Jewel grocery store parking lot immediately prior to the collision at Kedzie and Addison. The parties to the civil lawsuit settled the case in 2010 with a multi-million dollar payment to Ms. Varela.

Wilbert Neal, who is a Major Case Specialist for the Civilian Office of Police Accountability ("COPA")[4], testified at the hearing as a representative of IPRA and COPA pursuant to the Board's prior direction that the Superintendent provide an explanation about the agencies' investigation of the allegations against Respondents. Investigator Neal testified that fallout from the civil case caused IPRA to decide in the spring of 2010 to reopen the investigation into Respondents' actions relating to the August 10, 2004 collision. In particular, after the civil case was settled, one of the attorneys sent a letter to an alderman to report that there were some discrepancies between Respondents' deposition testimony and their prior accounts of their actions. The attorney's letter made its way from the alderman to the Mayor's Office (or to the Police Department) and then to IPRA. IPRA thereafter did a review and decided to reopen the investigation.

IPRA's investigation of Respondents extended for more than six years from the spring of 2010 until May 31, 2016. Notwithstanding this protracted time frame, Investigator Neal's

[4]COPA replaced IPRA on September 15, 2017.

testimony and his investigator's case log (Respondents' Exhibit 1)[5] indicate that IPRA engaged in very little actual investigative work during the course of the investigation. Moreover, much of the evidence that IPRA considered during its investigation was received by IPRA early on in the process. In particular, the City of Chicago provided IPRA with copies of the twenty-five deposition transcripts, including Respondents' deposition transcripts, from the civil lawsuit on May 10, 2010. In June 2010, IPRA's legal intern completed summaries of the depositions from the civil lawsuit. On August 3, 2010, IPRA received the pertinent OEMC event query from the evening of August 10, 2004.

Between August 2010 and October 2012, there are no entries Investigator Neal's case log. After making a records request in October 2012, Investigator Neal's log does not indicate that he took any other action on the investigation until late February 2013 when he began to attempt to schedule interviews with Respondents. Investigator Neal interviewed Respondents on April 25, 2013. During his interview with Investigator Neal, Sergeant Lopez stated that Respondents' squad car was parked on Kedzie facing northbound at the mouth of the entrance to the Jewel parking lot immediately prior to the collision that occurred at Kedzie and Addison. During his interview with Investigator Neal, Officer Feliciano also stated that Respondent's squad car was parked facing northbound in the southbound lane of Kedzie before the collision occurred. The next - - and last - - entries in Investigator Neal's case log concern his September 2014 request for the complaint in the civil lawsuit filed by Ms. Varela's family.

Investigator Neal offered a number of explanations for the extended length of the investigation. Among other things, he noted that:

[5] Investigator Neal (who was assigned to the investigation in June 2010) testified that "anytime you do something on the case, you log in the time and the date and the activity that you conducted at that time" in the investigator's case log.

- this was not a typical investigation for IPRA (which more regularly investigates physical altercations) because it concerned an "administrative" matter that is more typically investigated by the Internal Affairs Division;

- he had a heavy caseload of over 40 cases in both 2010 and 2011, including some very high profile cases and seven that concerned police-involved shootings, and his supervisors determined which of these cases needed immediate attention;

- his progress was delayed by the fact that IPRA moved its offices and assigned him a new supervisor in 2011;

- his progress was also delayed in 2016 when IPRA received a new Chief Administrator who wanted to review each case; and

- IPRA made an unsuccessful and time-consuming attempt to resolve the investigation through mediation in 2014.

Finally, Investigator Neal noted that the Superintendent McCarthy and Superintendent Johnson who led the Department at different times between 2010 and 2016 expressed contradictory views as to how this investigation should be resolved.

B. Resolution of the Parties' Factual Disputes:

The parties dispute two material factual matters.

First, the parties dispute the time on the evening of August 10, 2004, that the van collided with the car at the intersection of Kedzie and Addison. The Superintendent argues that the collision occurred at 11:36:30 p.m. in reliance on the testimony of Ms. O'Malley, who testified that she made her 911 call (which is documented at 11:36:40 p.m.) ten seconds after the collision occurred. Conversely, Respondents argue that the collision occurred at 11:35 p.m. based on a notation in Investigator Postelnick's MAIU supplemental report. Respondents also assert that Ms. O'Malley's testimony is not credible because no one had questioned her about the events of August 10, 2004, until the hearing and her testimony that she was stopped at a red light heading

westbound on Addison at the time of the collision had to be mistaken. Respondents base the latter point on the assumption that the light would have been red for eastbound traffic if it was red for westbound traffic. This could not be correct, according to Respondents, because it would mean that Ms. Varela's car (and not the van) ran a red light at Addison and Kedzie right before the collision.

The Board finds that Ms. O'Malley is a disinterested witness who credibly testified about the timing of her 911 call. It is believable that the passage of time would not dim Ms. O'Malley memory of this incident since she saw a body (Ms. Varela) literally flying in front of her face after the collision. The timing of the second 911 call, which was made twenty-four seconds after Ms. O'Malley's call, corroborates Ms. O'Malley's testimony. Moreover, as the Superintendent pointed out in his rebuttal argument, one of the pictures of the intersection at Kedzie and Addison (Superintendent's Exhibit 6) shows that there are the traffic lights at the intersection that contain turn signals. Consequently, it is possible that the eastbound traffic on Addison could have a green light with a green left turn signal at a time when the westbound traffic had a red light. Finally, the Board credits Investigator Postelnick's testimony that the time indicated for the crash in his report "[n]o doubt . . . [wa]s an estimate" that was not based on any witness accounts. Consequently, the Board finds that the collision occurred at 11:36:30 p.m.

The parties also dispute where Respondents were located and what Respondents were doing in the five to six minutes between the time that Respondents left the 3008 N. Sawyer location at 11:30 or 11:31 p.m. and the time of the collision at 11:36:30.

Respondents testified as follows at the hearing. As Respondents were leaving 3008 N. Sawyer, Sergeant Lopez wanted to go to Bank One to make a deposit before Respondents returned to the 14th District station at the end of their shift. Sergeant Lopez had $400 in cash on him and

depositing the cash was important to him because he intended to use the funds for his kids and their school supplies. Respondents decided to go to the Bank One in the Jewel parking lot near the intersection of Kedzie and Elston because it was closer to where they were currently located notwithstanding the fact that it was located four blocks north of Belmont, the northern boundary of their District.

After leaving their assignment at 3008 N. Sawyer, Respondents headed southbound on Sawyer, turned on Wellington, and drove north.[6] Respondents wound up parking facing north in the southbound lane of Kedzie roughly a car length south of the entrance to the Jewel parking lot. Respondents remained parked in their squad car at this location for one to two minutes doing paperwork when they heard the revving of an engine and saw the van speed by them at 30 to 40 miles per hour going northbound on Kedzie. Respondents did not know that the van was stolen when they first saw it but they decided to stop the van because the way it was speeding was suspicious. It took a few seconds for Respondents to react as the van went by them and a few seconds more for Sergeant Lopez to put the squad car into drive, turn on the emergency lights, and to look left and right, and to then pull across traffic to get behind the van as it continued to head north on Kedzie.

Respondents got behind the van before it got to the intersection of Elston and Kedzie. Officer Feliciano saw the van's plate and ran it through their PDT as the van was crossing Elston. Seconds later, Respondents were in the vicinity of the intersection of Kedzie and Elston when they received a response from OEMC indicating that the van was stolen. (Respondents agree that they received the OEMC response on their PDT at 11:34:30 p.m.) Respondents followed the van through the red light at Kedzie and Elston and they observed the accelerating van run the red light

[6] Respondents did not provide any testimony as to their route north.

at Kedzie and Addison and strike the car.

The Superintendent disputes Respondents' account of their actions after leaving the 3008 N. Sawyer location. In his opening statement, the Superintendent's counsel stated that he expected to present evidence showing that Respondents were heading eastbound on Diversey Avenue after they left 3008 N. Sawyer when they recognized Mr. Figueroa and Mr. Rivera in a van that was in the northbound left turn lane on Sacramento Avenue at the intersection of Sacramento and Diversey. After the van made a left turn onto Diversey heading west, Respondents made a U-turn and pulled in behind the van. The Superintendent then intended to show that Respondents ran the van's plate at that time, learned the van was stolen, and activated their emergency lights to apprehend the van once it turned right (northbound) onto Kedzie. Respondents then pursued the van at a high rate of speed northbound on Kedzie until the collision took place at Kedzie and Addison.

In their closing argument, however, the Superintendent's counsel candidly conceded that they presented no evidence to prove the above theory because they were unable - - despite their best efforts - - to subpoena the witnesses (namely, Mr. Rivera, Mr. Figueroa, and a civilian named Jose Ortiz) that they intended to rely upon. The Superintendent nonetheless argued that the evidence that they actually presented at the hearing proved that Respondents' account of where their pursuit of the van began was not true.

The Board agrees, and it finds that Respondents' account of their actions after they left the N. Sawyer location is implausible and ultimately not credible for multiple reasons.

First, Respondents' account of their actions preceding the collision cannot be reconciled with the undisputed documentary and physical evidence. Respondents admit that they received a notification from the OEMC that the van was stolen at 11:34:30 p.m. and that Officer Feliciano ran

the van's plates through Respondents' PDT seconds before OEMC responded. Respondents also testified that the collision took place within seconds after they received the OEMC notification. This cannot be true given the Board's finding that the collision took place at 11:36:30 p.m., which is two minutes after Respondents received the OEMC notification about the van.

Likewise, Respondents' testimony that Officer Feliciano ran the van's plates through Respondents' PDT as the van was crossing the intersection at Elston and Kedzie and Respondents received the OEMC notification before the van collided with the car at Kedzie and Addison is exceedingly implausible. Officer Feliciano testified that the distance between the intersection of Kedzie and Elston and the intersection of Kedzie and Addison is only 100 feet. The van, which was still accelerating per Respondents, would have covered the distance between the two intersections in less than 2.5 seconds if it was going between 30 and 40 miles per hour. It would have taken longer than that for the OEMC to receive and respond to Officer Feliciano's PDT message about running the van's plates.

Second, Respondents' explanation that they went to the Bank One in the Jewel parking lot on North Elston so that Sergeant Lopez could make a deposit is also implausible. Respondents knew at the time they left the N. Sawyer location that: (a) their shift ended in less than 30 minutes; (b) they needed to be present at the 14th District station, which was approximately 1.5 miles to the southeast at 2150 N. California, by the end of their shift; (c) there was a Bank One branch that was only a block from the 14th District station; (d) the Bank One at North Elston was outside the boundaries of their District; and (e) it was a violation of Department policy to leave their District without permission. Given these facts, it is hard to believe that a reasonable officer would decide to make his deposit at the Bank One outside of his District rather than at the Bank One that is a block away from his district station.

Third, Sergeant Lopez's testimony about the importance of making the deposit is thoroughly undercut by his actions. To begin, Sergeant Lopez never made his deposit at the Bank One on North Elston. In fact, Sergeant Lopez admitted when confronted on cross examination that he testified in his 2006 deposition that he *never* deposited the $400. Furthermore, Sergeant Lopez never went near the Bank One or even into the Jewel parking lot, and Respondents' claim that they parked at a location on Kedzie where they could not even see the Bank One.

Fourth, the fact that Respondents provided two admittedly inaccurate prior accounts of their location preceding the collision further undercuts their testimony that they were parked on Kedzie when the van drove by. In their "To/From" Reports, Respondents claimed that they were in the Jewel parking lot when the collision occurred. In their interviews with Investigator Postelnick, Respondents claimed that they were exiting the Jewel parking lot getting ready to turn south on Kedzie when the van drove by. Respondents have provided no explanation for the inconsistencies between their three explanations for where they were located prior to the collision. If Respondents were actually parked on Kedzie as they now insist, there is no apparent reason why they wouldn't have said that in the first place.

Finally, there is no evidence to corroborate Respondents' testimony that they were parked in the southbound lane of Kedzie facing north when the van drove by them.

Respondents' Motion to Dismiss

5. The Respondents filed a Joint Motion to Dismiss Charges ("Motion") requesting that the charges filed against them be stricken and the case dismissed, and the Motion is fully briefed.

In their Motion, Respondents argue that the twelve year and four month delay between when the underlying incident occurred on August 10, 2004, and when the charges were filed on

December 21, 2016 requires the dismissal of the charges for four reasons. First, "[t]he filing of these charges 12-plus years after the fact violates the due process rights of the Respondents." Motion, at 4. Second, the Superintendent has not been diligent in pursuing this case and there is "a compelling circumstance" that warrants the application of laches because the hearing on the charges was "conducted approximately 13 years after the incident that is the heart of the case" and "[t]he prejudice that will inure to the Respondents . . . because of the delay of so many years is obvious." Motion, at 4-5. Third, Respondents assert that the Board should exercise its authority to set a limit on the time for filing of charges seeking an officer's discharge and dismiss the charges in this case given the lengthy delay at issue. Motion, at 5-6. Finally, Respondents assert that the charges should be dismissed because the Department has already investigation the allegations of misconduct at issue here and disciplined Respondents by issuing reprimands in 2005.

A. The filing of charges in 2016 did not violate Respondent's due process rights

The Due Process clause of the Constitution precludes a state or local government from "depriving any person of life, liberty or property [i.e. a public job] without due process of law." Respondents claim - - with citation to *Morgan v. Department of Financial and Professional Regulation*, 374 Ill.App.3d 275 (1st Dist. 2007), and *Lyon v. Department of Children and Family Services*, 209 Ill.2d 264 (2004) - - that the Superintendent's filing of charges against them more than twelve years after the underlying incident violates their rights under the Due Process clause. However, Respondents' reliance on *Morgan* and *Lyon* is misplaced: those cases involved a delay in *adjudication* of allegations of misconduct after the respective plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *See Morgan*, 374 Ill.App.3d at 299-305 (finding a violation of the due process rights of a clinical psychologist

accused of sexually abusing a patient where the State took fifteen months to decide the case after it suspended the psychologist); *Lyon,* 209 Ill.2d at 282-84 (finding a violation of the due process rights of a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making).

The Respondents' cases before the Police Board are fundamentally different from *Morgan* and *Lyon*, as the Respondents are complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try them once the charges were filed and they were suspended without pay. This difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their names.

Here, by contrast, Respondents were working and were being paid their full salary and benefits during the twelve-plus year period from the time of the incident up to the filing of charges with the Police Board. Moreover, Respondents were not suspended without pay from his job until *after* the charges against them were filed. Under these circumstances, any delay in bringing the charges did *not* result in a violation of the Respondents' due process rights. Consequently, the Board rejects Respondents' due process argument. The Illinois Appellate Court has affirmed the Board's decision denying motions to dismiss that make essentially the same arguments as put forth by the Respondents. *See Orsa et al. v. Police Board,* 2016 IL App (1st) 121709, ¶39 (2016); *Chisem v. McCarthy,* 2014 IL App (1st) 132389, ¶15 (2014).

B. Respondents have failed to prove that the doctrine of laches applies in this case

"*Laches* is an equitable doctrine that precludes the assertion of a claim by a litigant whose

unreasonable delay in raising that claim has prejudiced the opposing party." *Orsa*, 2016 IL App (1st) 121709, ¶44. Private parties and public agencies are not on an equal footing when it comes to the application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview,* 158 Ill.2d 85, 90 (1994), hold that laches can only be invoked against a municipality under "compelling" or "extraordinary" circumstances. *See also Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1075 (1st Dist. 1992) ("*laches* is applied sparingly to public bodies"). In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice, *Hannigan*, 240 Ill. App. 3d at 1074, and speculative claims of prejudice are insufficient. *Orsa*, 2016 IL App (1st) 121709, ¶45.

In this case, Respondents assert that the more than thirteen year delay between the occurrence of the underlying incident and the hearing in this case constitutes "a compelling circumstance" that warrants the application of laches and that the prejudice that this delay has caused them is "obvious." Respondents have cited no authority in support of their argument and the Board rejects it.

It is well-settled that "[a] mere time lapse from the accrual of a cause of action to the filing of a lawsuit does not support a *laches* defense." *Orsa,* 2016 IL App (1st) 121709, ¶44; *Hannigan,* 240 Ill. App. 3d at 1074 ("To assert the defense of *laches*, a party must show more than a mere passage of time"). Indeed, "courts have refused to apply *laches* where there was no showing of prejudice and the parties could obtain a fair trial notwithstanding the delay in bringing suit." *Van Milligan,* 158 Ill.2d at 92. Thus, the delay between the occurrence of the underlying incident and the filing of charges is not - - standing alone - - a "compelling circumstance" as a matter of law.

To establish the applicability of laches, Respondents must show that the Superintendent displayed "an unreasonable delay in bringing th[is] action *and* that such delay materially

prejudiced" them. *Hannigan*, 240 Ill. App. 3d at 1074 (emphasis added). Even if the Board were to presume that the twelve-plus year delay between the underlying incident and the Superintendent's filing of charges against Respondents was unreasonable,[7] Respondents' attempt to rely on laches fails because they have not demonstrated that the delay caused them any prejudice, let alone the material prejudice that they are required to prove. Respondents have failed to identify any material witnesses who would have available but for the delay. Nor have they shown that the material witnesses (including themselves) had trouble with their overall recollection of the events. *See Bultas v. Board of Fire and Police Commissioners of City of Berwyn*, 171 Ill.App.3d 189, 195 (1st Dist. 1988) (refusing to apply laches where "plaintiff does not contend that the delay contributed to the unavailability of any material witness. . . . [and] although the evidence was based on recollection testimony, the record indicates that some of the witnesses had the benefit of reviewing prior written statements and not testified doubtfully or with equivocation as to the incidents"); *Orsa*, 2016 IL App (1st) 121709, ¶45; *Chisem*, 2014 IL App (1st) 132389, ¶19.[8] Finally, Respondents have failed to identify any "extraordinary" or "compelling" circumstance warranting the application of laches against the Superintendent. For these reasons, Respondents have failed to meet their burden of proof and their laches defense fails.

[7] The Board need not actually decide the issue of whether the Superintendent unreasonably delayed bringing charges against Respondents given that the issue of whether Respondents have established material prejudice can be determined. *See Nature Conservancy v. Wilder Corp. of Delaware*, 656 F.3d 646, 651 (7th Cir. 2011) (applying Illinois law).

[8] On the other hand, the Superintendent has suffered on account of the delay. Several of the eyewitnesses that the Superintendent unsuccessfully tried to subpoena to testify at the hearing (including Mr. Rivera and Mr. Figueroa) did provide deposition testimony for the civil case after presumably being subpoenaed to testify. It is not unreasonable to presume that the Superintendent may have had better success with his efforts to subpoena these witnesses if this case had been brought to hearing in 2006 rather than in 2018.

C. The Board will not set a limit on the time for filing charges seeking officer's discharge

Respondents assert that the Board should exercise its authority to set a time limit for filing charges seeking an officer's discharge because not doing so "would allow the Department to evade its responsibility to handle these cases in a prompt manner, as required by CPD's general orders, the collective bargaining agreement, and the Municipal Code of Chicago." Reply Brief, at 4. The Board rejects Respondents' request to set such a deadline.

The Chicago Municipal Code does not set a deadline for bringing charges against officers. *See Orsa*, 2016 IL App (1st) 121709, ¶40. Moreover, although the Department's General Orders and Special Orders do provide for prompt and thorough investigations and the prompt adjudication of disciplinary proceedings against officers, the Department's Orders do not set any absolute deadlines and the violation of the Orders does not provide a basis for automatic dismissal of charges against an officer. *See Orsa*, 2016 IL App (1st) 121709, ¶42; *Chisem*, 2014 IL App (1st) 132389, ¶17; *In re: Poulos,* 17 PB 2932, at 5-6 (February 28, 2018); *In re: Haleas,* 14 PB 2848, at 5 (August 21, 2014). For these reasons, the Board "has not dismissed charges in cases where investigations have taken several years." *In re: Poulos,* 17 PB 2932, at 5. Consequently, although the Board does not condone the protracted and unreasonably long IPRA investigation in this case, the Board will not dismiss the charges against Respondents for this reason.

D. The Board will dismiss charges based on allegations that were decided, or could have been raised and decided, in 2004 and 2005

Respondents argue that because the Chicago Police Department investigated the Respondents' involvement in the vehicle collision that occurred on August 10, 2004, and disciplined them for a proven violation (namely, being outside their District without permission) by issuing reprimands in 2005, the charges must be dismissed on the grounds that the law prohibits

them from being punished twice for the same conduct. *See Burton v. Civil Service Commission,* 76 Ill.2d 522, 526-28 (1979); *In re: Haleas,* 14 PB 2848, at 5-7. In his response, the Superintendent asserts that the "double punishment" principle articulated by *Burton* and *Haleas* does not apply here because "the Department never punished Respondents for the misconduct of which they presently stand accused." Response Brief, at 12. This is correct because the Department disciplined Respondents in 2005 only because they were outside of their District without permission. Consequently, Respondents are not entitled to dismissal of any charges based on this principle.

However, Respondents also argue that the Superintendent cannot charge them now based on an allegation (namely, that they violated the Department's policy on vehicle pursuits) that the Department previously investigated and found to be not sustained in 2005. Reply Brief, at 1-2. The Superintendent admits that the Department investigated this allegation and found it to be not sustained. Response Brief, at 13. The Board finds that the doctrine of *res judicata* applies here to bar the Superintendent from charging Respondents with allegations that were decided, or that could have been raised and decided in 2004 and 2005.

"[*R*]*es judicata* may be properly invoked based on administrative proceedings" such as the disciplinary proceedings conducted by the Department and the doctrine "applies not only to matters actually decided, but also to issues that could have been raised in the first proceeding." *Taylor v. Police Board of the City of Chicago,* 2011 IL App (1st) 101156, ¶20 (2011) (internal quotation marks omitted); *Carlson v. Rehabilitation Institute of Chicago,* 2016 IL App (1st) 143853, ¶22 (2016) ("*Res judicata* prevents a multiplicity of lawsuits between the same parties where the facts and the issues are the same"). For the doctrine to apply, there must be: (1) a final judgment on the merits; (2) an identity of cause of action; and (3) an identity of parties. *Taylor,*

2011 IL App (1st) 101156, ¶20.

In this case, the Department's 2005 dispositions of the allegations that Respondents were outside of their District without permission ("sustained") and violated General Order #03-03-01 involving Emergency Vehicle Operations – Pursuit ("not sustained") were final. Moreover, the parties involved in the prior disciplinary proceedings and the current case are identical. The remaining issue is whether some or all of the current charges against Respondents are part of the same "cause of action" as the charges that were determined in 2005.

Illinois applies the liberal "transactional test" to determine whether there is an identity of cause of action between the claims that have been decided and the claims sought to be barred by *res judicata*. *Taylor,* 2011 IL App (1st) 101156, ¶21. Under this test, "separate claims will be considered the same cause of action for purposes of *res judicata* if they arise from a single group of operative facts, regardless of whether they seek different theories of relief." *Carlson,* 2016 IL App (1st) 143853, ¶26; *see* alsoTaylor, 2011 IL App (1st) 101156, ¶21 ("[T]o determine whether there is an identify of causes of action between the first and second suits, we must look to the facts that give rise to plaintiffs' right to relief, not simply to the facts which support the judgment in the first action") (internal quotation marks omitted).

The Board finds that there is an identity of cause of action between the charges that were brought in 2004 and the current charges brought against Respondents based on their actions in 2004. To begin, the Superintendent is now bringing a number of charges that allege that Respondents violated the very *same* General Order (specifically, General Order #03-03-01 involving Emergency Vehicle Operations – Pursuits) that Respondents were accused of violating in the 2004. In particular, the allegations that Respondents: (1) engaged in an unauthorized vehicle pursuit; (2) failed to notify OEMC upon engaging in a vehicle pursuit; (3) failed to notify OEMC

of their location and remain at that location after the vehicle pursuit ended; and (4) failed to complete a Traffic Pursuit Report and/or obtain a Pursuit Tracking Number from the MAIU after engaging in a vehicle pursuit, all allege a violation of various provisions of General Order #03-03-01. Moreover, as Investigator Neal testified, these matters were investigated back in 2004.

Furthermore, the remaining charges that the Superintendent brings against Respondent based on their actions in 2004 - - which concern Respondents' failure to notify OEMC of the vehicle collision, their failure to request medical attention for Ms. Varela, and their making false statements about their location immediately before the collision and their actions immediately after - - arise from the same group of operative facts as the 2004 charges. The Department could have brought charges regarding these allegations back in 2004 based on the evidence that it had at that time. Under these circumstances, the Board finds that the application of *res judicata* to the charges that concern Respondents' conduct in 2004 would be in accord with fairness and justice. *See Carlson*, 2016 IL App (1st) 143853, ¶31 ("Equity dictates that the doctrine of *res judicata* should only be applied as fairness and justice require").

On the other hand, the Board will not apply the doctrine of *res judicata* to the charges that arise out of Respondent's conduct in 2006 and 2013. Respondents' actions in 2006 and 2013 are distinct in time from their conduct in 2004. The fact that the charges concerning Respondents' conduct in 2006 and 2013 have some factual connection to Respondents' conduct in 2004 in not sufficient in itself to establish that Respondents' actions in 2006 and 2013 are part of the same group of operative facts as Respondents' actions in 2004. *See, e.g., Taylor*, 2011 IL App (1st) 101156, ¶23 ("That there is some tenuous factual connection between two causes of action . . . does not establish a single group of operative facts"). Furthermore, as the Superintendent points out, the Department could not have investigated or charged Respondents in 2004 for alleged

misconduct that occurred years later.

In sum: for the reasons set forth above, the Board finds that dismissal of the following charges is warranted:

i. On or about August 10, 2004, Sergeant Lopez and Officer Feliciano failed to promptly notify the Office of Emergency Management and Communications ("OEMC") of a vehicular collision they witnessed at or near 3600 North Kedzie Avenue, in violation of Rule 2 (Count I), Rule 3 (Count I), and Rule 5 (Count I).

ii. On or about August 10, 2004, Sergeant Lopez and Officer Feliciano failed to promptly request medical attention for Ms. Regina Varela, who was injured in a vehicular collision they witnessed at or near 3600 North Kedzie Avenue, in violation of Rule 2 (Count II), Rule 3 (Count II), and Rule 5 (Count II).

iii. On or about August 10, 2004, Sergeant Lopez and Officer Feliciano engaged in an unauthorized vehicle pursuit the vicinity of 3600 North Kedzie Avenue, in violation of Rule 2 (Count III), Rule 3 (Count III), and Rule 6 (Count I).

iv. On or about August 10, 2004, Sergeant Lopez and Officer Feliciano failed to notify OEMC upon engaging in a vehicle pursuit the vicinity of 3600 North Kedzie Avenue, in violation of Rule 2 (Count IV), Rule 3 (Count IV), and Rule 6 (Count II).

v. On or about August 10, 2004, Sergeant Lopez and Officer Feliciano failed to notify OEMC of their location and remain at that location after the vehicle pursuit in which they engaged in the vicinity of 3600 North Kedzie Avenue, in violation of Rule 2 (Count V), Rule 3 (Count V), and Rule 6 (Count III).

vi. On or about August 10, 2004, Sergeant Lopez and Officer Feliciano failed to complete a Traffic Pursuit Report and/or obtain a Pursuit Tracking Number from the Major Accident Investigation Unit ("MAIU") after engaging in a vehicle pursuit the vicinity of 3600 North Kedzie Avenue, in violation of Rule 2 (Count VI), Rule 3 (Count VI), and Rule 6 (Count IV).

vii. On or about August 11, 2004, Sergeant Lopez and Officer Feliciano made a false, misleading, and/or inconsistent statement to MAIU investigators that they were exiting the Jewel grocery store parking lot at the entrance nearest to Jewel on the west side of Kedzie when they observed and subsequently followed the van that was ultimately involved in the vehicular collision that occurred at or near 3600 North Kedzie Avenue on or about August 10, 2004, in violation of Rule 2 (Count VII), Rule 3 (Count VII), and Rule 14 (Count I).

viii. On or about August 11, 2004, Sergeant Lopez made a false, misleading, and/or inconsistent statement to MAIU investigators that, immediately after the vehicular collision that occurred at or near 3600 North Kedzie Avenue on or about August 10, 2004, he stayed with the person injured in the collision and/or called for an ambulance while his partner, Officer

Daniel Feliciano, followed suspects fleeing from the scene, in violation of Rule 2 (Count VIII for Sergeant Lopez), Rule 3 (Count VIII for Sergeant Lopez), and Rule 14 (Count II for Sergeant Lopez).

ix. On or about September 23, 2004, Sergeant Lopez and Officer Feliciano made a false, misleading, and/or inconsistent statement in a "To/From" Report addressed to District Commander S. Avila that they "[were] at Bank One, located in the shopping mall at Kedzie and Elston, to make a night deposit at that financial institution" immediately prior to the vehicular collision that occurred at or near 3600 North Kedzie Avenue on or about August 10, 2004, in violation of Rule 2 (Count IX for Sergeant Lopez, Count VIII for Officer Feliciano), Rule 3 (Count IX for Sergeant Lopez, Count VIII for Officer Feliciano), and Rule 14 (Count III for Sergeant Lopez, Count II for Officer Feliciano).

x. On or about September 23, 2004, Sergeant Lopez and Officer Feliciano made a false, misleading, and/or inconsistent statement in a "To/From" Report addressed to District Commander S. Avila that on or about August 10, 2004, Sergeant Lopez rendered aid to accident victim Regina Varela and/or secured the scene of the accident while Officer Feliciano followed suspects fleeing from the scene, in violation of Rule 2 (Count X for Sergeant Lopez, Count IX for Officer Feliciano), Rule 3 (Count X for Sergeant Lopez, Count IX for Officer Feliciano), and Rule 14 (Count IV for Sergeant Lopez, Count III for Officer Feliciano).

Remaining Charges Against the Respondents

6. The Respondent, Sergeant Luis Lopez, Star No. 1417, charged herein, is **guilty** of violating Rule 2 (Count XI), Rule 3 (Count XI), and Rule 14 (Count V), in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about September 15, 2006, Sergeant Lopez provided false, misleading, and/or inconsistent testimony during a deposition in a civil case that he was in his squad car idling in a northbound direction in a southbound lane on Kedzie Avenue immediately prior to the vehicular collision that occurred at or near 3600 North Kedzie Avenue on or about August 10, 2004.

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference. The Board finds Respondent's testimony is not credible. Respondent provided two other distinct accounts of his location immediately prior to the collision that conflict with the testimony stated above and with each other. Respondent has provided no explanation for his differing accounts of his whereabouts. Moreover, Respondent's stated rationale for being at this

location, which is outside of his assigned District, is highly implausible, defies common sense, and is likewise not credible.

7. The Respondent, Sergeant Luis Lopez, Star No. 1417, charged herein, is **guilty** of violating Rule 2 (Count XII), Rule 3 (Count XII), and Rule 14 (Count VI), in that the Superintendent proved by a preponderance of the evidence the following charge:

> On or about September 15, 2006, Sergeant Lopez provided false, misleading, and/or inconsistent testimony during a deposition in a civil case that he never stated to MAIU investigators that he was in the Jewel grocery store parking lot immediately prior to the vehicular collision that occurred at or near 3600 North Kedzie Avenue on or about August 10, 2004.

See the findings set forth in paragraphs no. 4 and 6 above, which are incorporated here by reference.

8. The Respondent, Sergeant Luis Lopez, Star No. 1417, charged herein, is **guilty** of violating Rule 2 (Count XIII), Rule 3 (Count XIII), and Rule 14 (Count VII), in that the Superintendent proved by a preponderance of the evidence the following charge:

> On or about April 25, 2013, Sergeant Lopez provided false, misleading, and/or inconsistent testimony during his statement to IPRA Investigator Wilbert Neal that he was in his squad car idling in a northbound direction in a southbound lane on Kedzie Avenue at the mouth of the Jewel grocery store parking lot immediately prior to the vehicular collision that occurred at or near 3600 North Kedzie Avenue on or about August 10, 2004.

See the findings set forth in paragraphs no. 4 and 6 above, which are incorporated here by reference.

9. The Respondent, Police Officer Daniel Feliciano, Star No. 16807, charged herein, is **guilty** of violating Rule 2 (Count X), Rule 3 (Count X), and Rule 14 (Count IV), in that the

Superintendent proved by a preponderance of the evidence the following charge:

> On or about September 14, 2006, Officer Feliciano provided false, misleading, and/or inconsistent testimony during a deposition in a civil case that he was in his squad car idling in a northbound direction in a southbound lane on Kedzie Avenue immediately prior to the vehicular collision that occurred at or near 3600 North Kedzie Avenue on or about August 10, 2004.

See the findings set forth in paragraphs no. 4 and 6 above, which are incorporated here by reference.

10. The Respondent, Police Officer Daniel Feliciano, Star No. 16807, charged herein, is **guilty** of violating Rule 2 (Count XI), Rule 3 (Count XI), and Rule 14 (Count V), in that the Superintendent proved by a preponderance of the evidence the following charge:

> On or about April 25, 2013, Officer Feliciano provided false, misleading, and/or inconsistent testimony during his statement to IPRA Investigator Wilbert Neal that he was in his squad car parked in a northbound direction in a southbound lane on Kedzie Avenue immediately prior to the vehicular collision that occurred at or near 3600 North Kedzie Avenue on or about August 10, 2004.

See the findings set forth in paragraphs no. 4 and 6 above, which are incorporated here by reference.

Penalty

11. The Police Board has considered the facts and circumstances of each Respondent's conduct, and the evidence presented in mitigation, including each Respondent's complimentary and disciplinary histories.

Respondents have been found guilty of violating Rule 2, Rule 3, and Rule 14 by providing false and misleading testimony during their depositions in a civil case and their interviews with IPRA. This is extremely serious misconduct. "The duties of a police officer include making arrests and testifying in court, and a police officer's credibility is at issue in both the prosecution of

crimes and in the Police Department's defense of civil lawsuits." *In re: Bryant,* 16 PB 2903, at 6 (September 15, 2016).

The Respondents, however, each offered evidence in mitigation, which the Board has considered thoroughly. Each Respondent called several witnesses who testified credibly regarding his respective positive job performance, character, and reputation. Indeed, the testimony from certain of the character witnesses was extraordinary heartfelt, emotional, and (in one instance) entirely unscripted by Respondents or their counsel. In particular, after Officer Feliciano's counsel had concluded his questioning of Sergeant Mary Martin,[9] the Sergeant asked the Hearing Officer if she could say one more thing. After being granted leave to continue, Sergeant Martin gave the following testimony:

> Officer Feliciano and Luis Lopez . . . are part of the community in the 14th District. I know Danny grew up playing baseball in Humboldt Part. In this time in our lives where we need to build better between the community and the police[,] Officer Feliciano and Sergeant Luis Lopez represent everything that's good. I have seen both Officer Feliciano and Sergeant Lopez in situations ranging from shootings to holding a grandmother's hand who just needed someone to talk to. Those are God-given gifts. We try to teach those in the Academy. We do the best we can. But you can only teach and model so much.
>
> Officer Feliciano and the Luis Lopez have gifts from God that they that they could do that with ease and grace and compassion and strength. And during these last few years where they both would come to work and they would have this incident over their head not knowing if they would lose their job and career and their income. Every day, every single day, they would come to work on time looking sharp, respecting their fellow employees, their supervisor, but more importantly the citizens of the City of Chicago in Humboldt Park.
>
> I was always taught that your character comes out not when things are going well, but when things aren't going well. To make them whole again is a win not only for them and their family and our police family who miss them very much, but for the City of Chicago and its citizens. They are part of the community. They need to be made whole again. The community needs to be made whole again.

[9] Sergeant Martin is a nineteen year veteran with the Department and she has been a Sergeant since September 2010. She currently works in the 14th District and she has worked with Officer Feliciano on the Saturation Team, which patrols the most violent areas of the District.

In addition, each Respondent has an extensive complimentary history over many years with the Chicago Police Department. Sergeant Lopez was appointed in 2000 and has earned a total of 57 awards, including 1 Department Commendation and 43 Honorable Mentions. Officer Feliciano was also appointed in 2000 and has earned a total of 112 awards, including 1 Department Commendation and 91 Honorable Mentions. Sergeant Lopez and Officer Feliciano each has no sustained complaints on his disciplinary history.

"Decisions about the proper disposition when there is a finding of a Rule 14 violation are among the most important decisions that this board faces." *In re: Bryant,* 16 PB 2903, at 7. The Board "decides cases involving Rule 14 allegations on a case by case basis" with consideration of the "nuanced circumstances" and the "facts developed in the record." *In re: Bryant,* 16 PB 2903, at 7. In these cases, each Respondent's record and years of service to the Department, including each Respondent's work as an officer since the August 10, 2004, the lack of any other sustained complaints, the fact that the incident underlying these charges occurred early in their careers, and the unusually compelling character witness testimony presented on Respondents' behalf leads the Board to find that this is an appropriate case in which to temper justice with mercy. Accordingly, the Board finds that a suspension of each Respondent until January 11, 2020, is a justified and sufficiently stringent penalty on the facts of these particular cases.

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POLICE BOARD DECISIONS

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in these cases, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes:

> By votes of 6 in favor (Ghian Foreman, Steve Flores, John P. O'Malley Jr., John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp) to 0 opposed, the Board grants the Respondents' motion to dismiss the charges that Respondent Sergeant Luis Lopez violated Rule 2 (Counts I-X), Rule 3 (Counts I-X), Rule 5, Rule 6, and Rule 14 (Counts I-IV), and that Respondent Police Officer Daniel Feliciano violated Rule 2 (Counts I-IX), Rule 3 (Counts I-IX), Rule 5, Rule 6, and Rule 14 (Counts I-III);
>
> By votes of 5 in favor (Foreman, Flores, O'Malley, Sweeney, and Zopp) to 1 opposed (Simpson), the Board finds Respondent Sergeant Luis Lopez **guilty** of violating Rule 2 (Counts XI-XII), Rule 3 (Counts XI-XII), and Rule 14 (Counts V-VI), and Respondent Police Officer Daniel Feliciano **guilty** of violating Rule 2 (Count X), Rule 3 (Count X), and Rule 14 (Count IV); and
>
> By votes of 6 in favor (Foreman, Flores, O'Malley, Simpson, Sweeney, and Zopp) to 0 opposed, the Board finds Respondent Sergeant Luis Lopez **guilty** of violating Rule 2 (Count XIII), Rule 3 (Count XIII), and Rule 14 (Count VII), and Respondent Police Officer Daniel Feliciano **guilty** of violating Rule 2 (Count XI), Rule 3 (Count XI), and Rule 14 (Count V).

As a result of the foregoing, the Board, by votes of 6 in favor (Foreman, Flores, O'Malley, Simpson, Sweeney, and Zopp) to 0 opposed, hereby determines that cause exists for suspending each Respondent from his position as a sworn officer with the Department of Police, and from the services of the City of Chicago, until January 11, 2020.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Sergeant Luis Lopez, Star No. 1417, as a result of having been found **guilty** of certain charges in Police Board Case No. 16 PB 2923, be and hereby is **suspended** from his position as a sergeant of police with the Department of Police, and from the services of the City of Chicago, from January 12, 2017, to

and including January 11, 2020.

IT IS FURTHER ORDERED that the Respondent, Police Officer Daniel Feliciano, Star No. 16807, as a result of having been found **guilty** of certain charges in Police Board Case No. 16 PB 2924, be and hereby is **suspended** from his position as a police officer with the Department of Police, and from the services of the City of Chicago, from January 12, 2017, to and including January 11, 2020.

These disciplinary actions are adopted and entered by a majority of the members of the Police Board who participated in these cases: Ghian Foreman, Steve Flores, John P. O'Malley Jr., John H. Simpson, Rhoda D. Sweeney, and Andrea L. Zopp. (Board Members Eva-Dina Delgado and Michael Eaddy recused themselves from these cases pursuant to §2-57-060(c) of the Municipal Code of Chicago.)

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 17th DAY OF MAY, 2018.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT FROM CERTAIN FINDINGS AND CONCURRENCE WITH DECISION

I concur with the majority's findings of not guilty in connection with the charges relating to the 2004 events. I dissent with respect to the findings relating to the 2006 testimony, and I very reluctantly concur in the findings relating to the 2013 statements.

This is another in an inexplicably high number of cases filed years, and in many instances more than a decade, after the conduct with respect to which officers are charged. Moreover, here, as in most of these cases, the record is bereft of any explanation for the delay. One can speculate it is a result of ineptitude, sloth, understaffing or some more nefarious motive, and indeed Investigator Neal essentially offers all of those explanations and more, but none provide a permissible reason for this type of delay.

As the majority acknowledges, the Department's General Orders and Special Orders provide for prompt and thorough investigations and the prompt adjudication of disciplinary proceedings against officers. That there is no municipal ordinance requiring adjudication within a specific time period is irrelevant. We have the General and Special Orders, and they are clear.

We are thus faced with a delay in the investigation of these charges of, depending on one's point of view, either 12 years, from the original testimony at issue, or 8 years, from the commencement of the IPRA investigation. How that type of delay in bringing charges, and an investigation that by itself took six years, including lengthy periods of complete somnolence, doesn't violate that order is, to me, unfathomable. The majority doesn't provide a rationale, instead offering a conclusory and facially incredible statement that it doesn't. The investigator's proffered reasons for the delay are a slight step above the dog ate my homework, but not by a measurable amount. The majority does refer to our recent Poulus decision to support the proposition that lengthy delays in investigation and adjudication do not necessarily warrant dismissal of charges.

The irony of citing a case in which we did just that for just those reasons speaks for itself.

There is good reason for the General Order at issue here. Memories fade, witnesses disappear, and a basic sense of fairness is seriously undermined. Moreover, I leave it to someone wiser than I to explain how these officers were somehow fit to serve for some 12 years since the events in connection with which these charges are brought, but over a decade later, they should, in the view of the Superintendent, be terminated. While there is no such evidence in this case, cases such as these raise also the very serious question, as has been alleged in other cases, whether the Department essentially puts charges in a drawer, waiting to resurrect them, or threaten to do so, when an officer otherwise displeases his superiors, or whether the City resurrects cases to save itself from some recent embarrassment.

To put this in perspective, the statute of limitations for all but the most serious felonies in Illinois is three years. Illinois law requires that use of force cases must be brought within five years. In this case, as to the charges relating to the 2006 conduct, the Board allows charges that are more than three times the statute of limitations for most felonies and more than double the time allowed for use of force charges, certainly more serious than those brought here.

Moreover, our practice is inconsistent with that of other major cities. I have not done a comprehensive survey, and we should, but at first glance both New York and Los Angeles require the bringing of charges such as these in a fraction of the time at issue here.

The majority has rendered the General Order requiring a prompt and thorough investigation and prompt adjudication of disciplinary proceedings a dead letter. We should either repeal the order or follow it. Flaunting it is not an acceptable option. At some point I would think the Circuit Court would provide guidance as to the meaning of the General Order. We have simply

ignored it in this case.

Because there is no credible reason given for the delay in this case, and because the majority does not, and frankly cannot, provide any explanation as to how it has determined that over a decade is "prompt", I would dismiss the charges with respect to the 2006 conduct, and I remain seriously troubled by the charges with respect to the 2013 conduct but reluctantly concur in the findings with respect to those charges. I also concur with the decisions to suspend the Respondents from January 12, 2017, to and including January 11, 2020.

/s/ JOHN H. SIMPSON

RECEIVED A COPY OF

THESE FINDINGS AND DECISIONS

THIS _____ DAY OF _____, 2018.

_____
EDDIE T. JOHNSON
Superintendent of Police